

2581-0140/dmf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WILLIAM O. BARRETT,

Plaintiff,

-against-

ANSWER

07 CIV 7106 (CLB)

COUNTY OF DUTCHESS, DUTCHESS COUNTY
SHERIFF'S OFFICE, KURT TWADDEL, NEIL A.
STEWART, JR., JEFFREY ACKEN, PETRUS and JOHN
DOE #1, JOHN DOE #2, JOHN DOE #3, Individually, and as
DEPUTY SHERIFFS OF THE DUTCHESS COUNTY
SHERIFF'S OFFICE,

Defendants.
-----X

The defendants, County of Dutchess, Dutchess County Sheriff's Office, Kurt Twaddel, Neil A. Stewart, Jr., Jeffrey Acken and Ryan Petrus, by their attorneys, McCabe & Mack LLP, as and for their answer to the complaint of the plaintiff, respectfully show to the court and allege as follows.

JURISDICTION

1. With regard to paragraphs numbered "1", "2" and "6" of the complaint, neither admit nor deny as states conclusions of law.
2. With regard to paragraph numbered "3" of the complaint, neither admit nor deny and refer the court to the document for its content and import.
3. With regard to paragraph numbered "4" of the complaint, admit only that the matter was not settled.
4. Deny those allegations contained in paragraph numbered "5" of the complaint.

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CLAIM

5. With regard to paragraph numbered "7" of the complaint, neither admit nor deny as complaint speaks for itself.

6. Deny those allegations contained in paragraph numbered "8" of the complaint.

PARTIES

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "9" of the complaint.

8. With regard to paragraph numbered "10" of the complaint, admit only that the County office building is at 22 Market Street and deny the remaining allegations.

9. With regard to paragraph numbered "11" of the complaint, admit only that the Sheriff's office is at 150 North Hamilton Street and deny the remaining allegations.

10. With regard to paragraph numbered "12" of the complaint, admit defendants Twaddel, Stewart, Acken and Petrus were acting within the scope of employment and deny knowledge or information sufficient to form a belief as to the allegations with respect to John Doe #1, John Doe #2 and John Doe #3 and deny the remaining allegations

11. With regard to paragraph numbered "14" of the complaint, deny defendants acted beyond the scope of their employment.

12. With regard to paragraph numbered "15" of the complaint, admit the allegations with respect to Twaddel, Stewart, Acken and Petrus and deny knowledge or information sufficient to form a belief as to the allegations with respect to John Doe #1, John Doe #2 and John Doe #3.

FACTUAL AND GENERAL ALLEGATIONS

13. Deny those allegations contained in paragraphs numbered "17", "18", "20", "25", "37", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "52", "53", "54",

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"55", "58", "59", "61", "62", "63", "64", "65", "66", "67", "69", "70", "71", "72", "73", "74", "75", "76" and "77" of the complaint.

14. With regard to paragraph numbered "24" of the complaint, deny Gary Schott was the driver.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "29", "30" and "68" of the complaint.

16. With regard to paragraph numbered "51" of the complaint, deny there was an attack.

17. With regard to paragraph numbered "57" of the complaint, admit plaintiff pled guilty and deny the remaining allegations.

18. With regard to paragraph numbered "60" of the complaint, admit only that plaintiff was taken to the Beekman substation.

AS TO THE FIRST CAUSE OF ACTION

19. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "77" and incorporated by reference in paragraph "78" of the complaint as if the same were more fully set forth herein at length.

20. Deny those allegations contained in paragraphs numbered "79", "80", "81", "82", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "94", "95" and "96" of the complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "83" of the complaint.

AS TO THE SECOND CAUSE OF ACTION

22. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "96" and incorporated by reference

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in paragraph "97" of the complaint as if the same were more fully set forth herein at length.

23. Deny those allegations contained in paragraphs numbered "98", "99", "100", "101", "102", "103", "104", "105", "106" and "108" of the complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "107" of the complaint.

AS TO THE THIRD CAUSE OF ACTION

25. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "108" and incorporated by reference in paragraph "109" of the complaint as if the same were more fully set forth herein at length.

26. Deny those allegations contained in paragraphs numbered "110", "111", "112", "113" and "114" of the complaint.

AS TO THE FOURTH CAUSE OF ACTION

27. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "114" and incorporated by reference in paragraph "115" of the complaint as if the same were more fully set forth herein at length.

28. Deny those allegations contained in paragraphs numbered "116", "117", "118" and "119" of the complaint.

AS TO THE FIFTH CAUSE OF ACTION

29. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "119" and incorporated by reference in paragraph "120" of the complaint as if the same were more fully set forth herein at length.

30. Deny those allegations contained in paragraphs numbered "121", "122", "123" and "124" of the complaint.

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AS TO THE SIXTH CAUSE OF ACTION

31. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "124" and incorporated by reference in paragraph "125" of the complaint as if the same were more fully set forth herein at length.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "126" of the complaint.

33. Deny those allegations contained in paragraphs numbered "127", "129", "130" and "131" of the complaint.

34. With regard to paragraph numbered "128" of the complaint, neither admit nor deny as states a conclusion of law.

AS TO THE SEVENTH CAUSE OF ACTION

35. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "131" and incorporated by reference in paragraph "132" of the complaint as if the same were more fully set forth herein at length.

36. Deny those allegations contained in paragraphs numbered "133", "135", "137", "138", "139", "140" and "141" of the complaint.

37. With regard to paragraph numbered "134" of the complaint, admit only that plaintiff pled guilty and deny the remaining allegations.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "136" of the complaint.

AS TO THE EIGHTH CAUSE OF ACTION

39. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "141" and incorporated by reference in paragraph "142" of the complaint as if the same were more fully set forth herein at length.

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40. Deny those allegations contained in paragraphs numbered "143", "145", "146", "147", "149", "150" and "151" of the complaint.

41. With regard to paragraph numbered "144" of the complaint, admit plaintiff pled guilty and deny the remaining allegations.

42. With regard to paragraph numbered "148" of the complaint, neither admit nor deny as the document speaks for itself.

AS TO THE NINTH CAUSE OF ACTION

43. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "151" and incorporated by reference in paragraph "152" of the complaint as if the same were more fully set forth herein at length.

44. With regard to paragraph numbered "153" of the complaint, neither admit nor deny as states a conclusion of law.

45. Deny those allegations contained in paragraphs numbered "154", "155" and "156" of the complaint.

AS TO THE TENTH CAUSE OF ACTION

46. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "156" and incorporated by reference in paragraph "157" of the complaint as if the same were more fully set forth herein at length.

47. With regard to paragraph numbered "158" of the complaint, neither admit nor deny as states a conclusion of law.

48. Deny those allegations contained in paragraphs numbered "159", "160", "161", "163", "164" and "165" of the complaint.

49. With regard to paragraph numbered "162" of the complaint, neither admit nor deny the allegations with respect to "duty" as they state a conclusion of law and deny the

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remaining allegations.

AS TO THE ELEVENTH CAUSE OF ACTION

50. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "165" and incorporated by reference in paragraph "166" of the complaint as if the same were more fully set forth herein at length.

51. Deny those allegations contained in paragraphs numbered "168", "170", "172", "173", "175", "176" and "177" of the complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "171" of the complaint.

53. With regard to paragraph numbered "174" of the complaint, neither admit nor deny as states a conclusion of law.

AS TO THE TWELFTH CAUSE OF ACTION

54. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "177" and incorporated by reference in paragraph "178" of the complaint as if the same were more fully set forth herein at length.

55. With regard to paragraph numbered "179" of the complaint, neither admit nor deny as states a conclusion of law.

56. Deny those allegations contained in paragraphs numbered "180", "181", "182", "183", "184", "185", "186" and "187" of the complaint.

AS TO THE THIRTEENTH CAUSE OF ACTION

57. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "187" and incorporated by reference in paragraph "188" of the complaint as if the same were more fully set forth herein at length.

58. With regard to paragraph numbered "190" of the complaint, deny the

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individual defendants committed any tortuous actions.

AS TO DAMAGES

59. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "181" and incorporated by reference in paragraph "191" of the complaint as if the same were more fully set forth herein at length.

60. Deny those allegations contained in paragraphs numbered "192" and "193" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

61. All force used, if any, was reasonable and necessary.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

62. The individual defendants acted in good faith and are entitled to qualified immunity.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

63. Probable cause existed for plaintiff's arrest.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

64. Defendants acted in good faith and without malice.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

65. Plaintiff's fourth cause of action fails to state a claim.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

66. Plaintiff's fifth and ninth causes of action fail to state claims under the Equal Protection and Due Process Clauses to the United States Constitution.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

67. Plaintiff's indictment and guilty plea bar his claims for false arrest and malicious prosecution under both state and federal law.

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AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

68. Plaintiff's tenth cause of action for negligence under 42 U.S.C. §1983 fails to state a claim.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

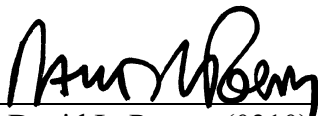
69. Plaintiff failed to comply with General Municipal Law §50-e *et. seq.* with respect to his eleventh and twelfth causes of action.

WHEREFORE, the defendants, County of Dutchess, Dutchess County Sheriff's Office, Kurt Twaddel, Neil A. Stewart, Jr., Jeffrey Acken and Ryan Petrus demand judgment dismissing the complaint of the plaintiff herein, plus the costs and disbursements of this action and for such other and further relief as to the Court may seem just and proper.

DATED: Poughkeepsie, New York
September 11, 2007

Yours, etc.

McCABE & MACK LLP

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